

EXTRACT

FROM

A MEMOIR

IN BEHALF OF THE

SEMINARY OF MONTREAL,
IN CANADA,

TO PROVE THE

LEGALITY OF ITS ESTABLISHMENT
AND
POSSESSIONS IN THAT PROVINCE.

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SEMINARY OF MONTREAL, IN CANADA,

TO PROVE THE

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IN THAT PROVINCE.

POSSESSION would be sufficient to justify the Seminary of Montreal in defending its rights; but, reports having been accredited against the legality of that possession, it becomes a duty on the part of the Seminary, to make known the nature of its title.

All that has been advanced against this Establishment, may be reduced to a denial, in the 1st place, of its legal existence as a Body Corporate; and in the 2d, of the legal right, which the Seminary consequently has to its property.

To pretensions thus hazarded, we hope to oppose the most satisfactory evidence; and, if the subject be not one of general interest, it deeply concerns, at least, the Province of Canada, which reaps from this Seminary the most important advantages in respect to its poor, its hospitals, its colleges, schools, religious instruction, and the welfare of the Indian population.

In the first place, the Seminary of Montreal is of ancient foundation: it was established in 1677, by Letters Patent, enrolled in the Higher Council the 20th September of that year, a Copy of which Enrolment is preserved in the Archives of the Seminary, reciting, "*the demand of M. Lefevre that the Letters Patent for establishing a Seminary of Ecclesiastics in the Island of Montreal, be registered.*" [A]

1st Proof.
Length of
Possession.

There is the copy also of an Enrolment in the year 1717, of Letters Patent granted in 1714, purporting to be "*at the request of the Ecclesiastics of the Seminary of St. Sulpice, established at Ville-Marie, Lords and Proprietors thereof;*" and there is likewise the Copy of an Enrolment in 1718, of the same Letters Patent, purporting to be granted to "*Messrs. the Ecclesiastics of the Seminary of St. Sulpice, established in this Town.*"

In the collection of Canadian Laws, p. 289, we find the Seminary of Montreal was existing in 1693; and in page 305, it is again mentioned in the Decree of 1702.

[A] About the year 1645, Missioners of the Congregation of St. Sulpice in France, were sent to Montreal, in Canada, to convert the Indians in that province: in 1663, the Company of Montreal, who were proprietors of that Island, granted all their property in Canada to the Congregation of St. Sulpice: in 1677 their donation was confirmed by the King of France, and appropriated by Letters Patent of that year, to serve as a foundation for a Sulpician Seminary at Montreal.

The duration, then, of the Establishment at Montreal, proves its legality;—*1st*, Because the Declaration of 1743, contains (in Art. 9,) an express exception in favour of establishments *then existing* in Canada; and *2dly*, Because by the French Laws, anterior to the Edict of 1749, Seminaries were exempted from the necessity of producing Letters Patent to prove their establishment. Such is the ordinance of 1659, which the Parliament of Paris registered with this express exception as to Seminaries; and such also is the ordinance of 1666. In Canada, therefore, where the Edict of 1749 is not in force, Letters Patent to prove the legal establishment of the Seminary of Montreal, need not be produced; although such production would be easy if required; and whereas the duration of this Establishment for a period of thirty years, would suffice to make good its title: (*Durand. Dict. de Dt. Canon. T. 2. p. 333.*) the Seminary of Montreal can claim an uninterrupted continuance for more than one hundred and forty, from the date of its foundation, in 1677.

This Seminary has clearly then, a legal existence; *1st*, Because it comes within the exception of Art. 9, of the Declaration of 1743; *2dly*, Because Seminaries are not obliged to produce Letters Patent to prove their establishment; and, *3dly*, Because its duration previous to 1743, had exceeded by far the period of 30 years.

2d Proof.
Recognition
by the Bi-
shops of Que-
bec.

The legality of the Establishment at Montreal, is further proved by the formal recognition thereof by the Bishops of Quebec, who annexed the perpetual advowsons of several parishes to the Seminary, even as early as 1678, that is, only one year subsequent to its foundation;—and can it be supposed, that the Bishops of Quebec would have thus acted, had there been any doubt on such a subject? For who were better acquainted with the constitution of Seminaries, than Bishops, specially authorized under the old French Government to settle and endow such Establishments; and more particularly with respect to a Seminary, which in 1678 had existed but one year?

3d Proof.
Recognition
by the
Mother
House of
St. Sulpice,
in France.

The legal existence of the Establishment at Montreal, is again proved, by the repeated recognitions thereof on the part of the Superiors of St. Sulpice, at Paris, who could not be ignorant as to the legality or otherwise of their respective Foundations, and still less of that at Montreal, which they had been commissioned by the King himself to establish. By the Archives of the Seminary it appears, that the Superiors of St. Sulpice, in 1696, made over to it a considerable sum, to be placed out on perpetual rent charges; and, finally, in 1764, under an Article of the Treaty, they ceded to the Seminary of Montreal all right and title they might have to any possessions in Canada.—Is it to be supposed, they would have made a cession of this extent, to a Community illegally established? [B]

The superiors of St. Sulpice at Paris, had again so far recognized the legal existence of the Seminary at Montreal, that in 1693, they petitioned the King to annex to it the privileges and emoluments belonging to the Registry; and in 1702, they petitioned his Most Christian Majesty to confirm to this establishment the perpetual advowsons before mentioned.

4th Proof.
Recognition
by the civil
authorities
in Canada.

The legality of the establishment at Montreal is further proved by the acts of the civil authorities in Canada.

1st, By the Court of Montreal, and the Higher Council, as appears in their several acts of Enrolment, particularly in that of the Letters Patent,

[A] The cession was *mutual* with respect to Sulpician property in France and Canada; and to render a partition of this description legal, no Letters Patent, or Licence, were required by the French law.

for annexing to the seminary the advowsons, and in which it is stated, that the parishes in question, "*are united to, and incorporated with, the Seminary of St. Sulpice, established at Montreal.*"

2dly, By the grant made by the Governor and Intendant in 1717, of the lordship of "*Le Lac, to the Ecclesiastics of the seminary of St. Sulpice, established at Montreal,*" the ratification of which grant, by the congregation of St. Sulpice at Paris, was simply to preserve the accustomed subordination in religious bodies, and did not hinder the Governor from considering the Seminary as a Community so far legalized, as to be fully capable of holding the Signory or Lordship in question.

3dly, By the notification of the Ordinances of 1732 and 1743, (touching mortmains) to the Seminary of Montreal, considered, therefore, as a mortmain community.

The legality of the establishment at Montreal is again proved by a great variety of Royal Acts, copies of which are carefully preserved among its Archives.

5th Proof.
Recognition
by the King
of France.

1st, By Letters termed "*de Terrier,*" of 1695, in which the King of France formally recognizes, that a Community of the congregation of St. Sulpice, had been established at Montreal, and that the donation in 1663, to the house of St. Sulpice in France, had been expressly made for establishing the same.

2dly, By Letters (*de Terrier*) in 1724, in which the King recognizes a Community of Ecclesiastics established under his own sanction, at Montreal, by the congregation of St. Sulpice in France.

3dly, By the creation of the office of *Registrar*, with the rights and emoluments belonging to the same, and the recognition of the *Registry*, as belonging to "*the Ecclesiastics of the Seminary of St. Sulpice, established in the Island of Montreal.*"

4thly, By the Edict of 1693, in which is made mention of "*the Ecclesiastics of the Seminary of St. Sulpice established in the Island of Montreal,*" of the jurisdiction and profits of their Manorial Courts and Signories, and of their right to appoint the Registrar, and to enjoy the emoluments of the Registry.

5thly, By the Decree of the Council of State, 15th May, 1702, for annexing the perpetual advowsons of the Parishes before mentioned, to the Seminary of Montreal, and which, after reciting that the Ecclesiastics of St. Sulpice had established the Seminary by virtue of the Letters Patent of 1677, states, that in annexing the advowsons of these parishes to the seminary, the King's pleasure was, that they should be served by such Ecclesiastics thereof, as should be named by the Superior for the time being, of that establishment.

6thly, By the Letters Patent of June, 1702, in which it is recited, that the congregation of St. Sulpice had established a Community and Seminary at Montreal; and the King declares therein, that the parishes in question "*shall remain united to, and incorporated with, the Seminary of the Ecclesiastics of St. Sulpice, established at Ville-Marie.*" Here then is a Community established by virtue of Letters Patent, and to which are annexed, by Royal authority, the perpetual advowsons of divers parishes:—Surely, no stronger evidence can be adduced, of the legal existence of a corporate body.

7thly, By the Decree of the Council of State in 1716, in which the King directs, that "*an impost of 2000 livres shall be levied on the seminary of St. Sulpice, established at Montreal, of which town, as well as of the island, the seminary are lords,*"—and that with respect to other Communities, &c. &c.

Here the State recognizes in the Seminary of Montreal, a Community

existing like other Communities;—a Community, legally established;—a Community, possessing property;—a Community, Lords of the Town and Island;—a Community, on which the Legislature imposes a public tax.—Surely no recognition can be more formal or conclusive.

8thly, By a Decree in 1722, in all respects similar to the last, and which furnishes the same proofs.

6th Proof.
Charter of
Foundation.

The legality of the Establishment at Montreal is further shewn, by the Letters Patent of 1677, or Foundation Charter, preserved among its archives, and bearing for title, "*Establishment of a Seminary in the Island of Montreal*;" and endorsed, "*For the Establishment of a Seminary in New France*."—The Enrolment of these Letters Patent bear the same title, and within is stated, "*We have permitted them [c], and do by these presents permit, that a Community and Seminary of Ecclesiastics be established in the Island of Montreal.*"

7th Proof.
Conquest.

The Seminary of Montreal once established, necessarily continued after the conquest of Canada, in the manner of other bodies corporate.

In the articles of capitulation, the Seminary of Montreal is confounded with the other religious bodies, and is designated by the title of "*Community of Priests of St. Sulpice of Montreal*."—The Articles then, make mention of its rules and constitutions, and therefore clearly designate it as an independant Community; and, admitting these points to have been subjected to the pleasure of the King, so long, as the Sovereign shall not have manifested a contrary will, the Seminary of Montreal undoubtedly remains a legal established Community: finally, in the 34th Article of the Capitulation, it is expressly provided, that, "*all the Religious Communities should be maintained in the possession of their property.*"

8th Proof.
Usage.

Subsequent to the conquest of Canada, as well as previous to that event, the Seminary has never ceased to exercise acts of ownership, without number, and in all which it has invariably acted as a body corporate: Blackstone, in his Commentaries, says, custom establishes bodies; and, as we have shewn before, a usage of thirty years was sufficient, according to the ancient French jurisprudence; and the law on this head remains unaltered in Canada. Moreover, the Declaration of 1743, as we have seen, expressly excepted *existing* establishments, and *seminaries* were specially exempted from the necessity of producing Letters Patent to prove their foundation.

9th Proof.
Recognition
by the
British
Government.

Government, which alone possesses a right to contest the legality of corporations, since the authority of the state can alone be affected by them, has so clearly recognized the establishment at Montreal as a body corporate, that, by an Order in Council of 1766, a rent was directed to be paid for the Registry Office, belonging to the seminary, and the minutes of the Registry to be restored; and in 1776, the Lieutenant Governor, in a letter to M. Montgolfier, then superior of the Establishment, directed him to appoint the Registrar;—now, to receive rent from Government for a *Registry Office*, and to be authorized to keep a public *Registry*, and to appoint to the office of *Registrar*, are clearly privileges that belong not to the individual members of a community: to recognize, therefore, such privileges, is necessarily to recognize them as appertaining to the body.

[c] The Ecclesiastics of the Congregation of St. Sulpice in France.

A still more solemn act of recognition on the part of Government, has been, its acceptance of the accustomed oaths of fealty and homage, by the Seminary of Montreal, through the medium of M. Brassier, an individual member of that establishment, and who was admitted to perform this duty in his official character of Procurator for the Seminary, without shewing any Procuration, or specifying the individual Members of the Establishment whom he was allowed to represent: privileges, which belong only to a community, or body corporate, legally established. It must be observed, likewise, that previous to the performance of this duty of fealty and homage, M. Brassier produced the Letters Patent of 1677, to shew, that he was acting on behalf of the Seminary as a legally founded Establishment; and the recognition of him by Government in this his official character, is conclusive on the subject:—In further proof, however, the instructions of his Britannic Majesty, published by order of the House of Commons in 1817, may here be mentioned. By these instructions it is declared, that, "*the Society of Priests, called Seminaries of Quebec and Montreal, are authorized to fill vacancies, and to admit new members according to the rules of their foundation.*" And the instructions then enjoin, that "*these Seminaries, as well as all other Communities, should be subjected to the Royal Visitation.*"

10th Proof.
Oaths of
Fealty and
Homage.

King's
Instructions.

With respect to the legal capacity in the Seminary of Montreal, of holding property, in the manner of other corporate bodies, it can admit of no question.

We see by the Letters (termed *De Terrier*) of 1695, that the donation made in 1663 to the Congregation of Saint Sulpice, had been expressly intended for an Establishment at Montreal; and by the Letters Patent of 1677 this donation was actually assigned to, and amortized in favour of that particular Community: The Seminary is, therefore, as clearly capable of holding property, as any Ecclesiastical Corporation, legally established in the British dominions; and it would be needless to recapitulate the evidence already deduced on this head. A corporate body is a society recognized by the law, and invested with all the rights of an individual, and an Ecclesiastical Community, cannot even be established, unless possessions be assigned for its foundation; when, therefore, a Community is founded, (as was the Seminary of Montreal by Letters Patent in 1677) it necessarily follows, that it is capable of possessing and holding property.

11th Proof.
The Semi-
nary of
Montreal
capable of
holding Prop-
erty in the
Manner of
other Corpo-
rate Bodies.

With respect to the legal existence of the Seminary of Montreal previous to the conquest of Canada, as distinct from the Mother House in France, sufficient evidence has been shewn, and it remains for those who assert that the Seminary has no longer a legal existence, to prove, that it has lost that character; and until they can do this, the Seminary is as clearly justified in maintaining its rights, as any other Ecclesiastical Corporation within the King's dominions.

12th Proof.
The Semi-
nary of
Montreal
had a legal
Existence,
distinct from
the House of
St. Sulpice in
France.

It is universally known, that in Catholic States, not only Religious Orders, but each particular House or Community, is entitled to, and enjoys the privileges of a distinct body: two several existences, as it were, may be distinguished in a Religious Community, the one, as an integral portion of the order, the other, as a body separately constituted. It was thus the Seminary of Montreal stood, previous to the conquest of Canada; as part

of the *Congregation of Saint Sulpice*, it had one common title, but as a *particular* House or Community of that Congregation, it had a proper and distinct existence.

Previous to the year 1677, the Ecclesiastics of the Seminary of Montreal, had no other description, than as members of the congregation of Saint Sulpice in France; but, from the moment, the Letters Patent of 1677, had erected them into a distinct community, the Seminary of Montreal acquired as such, a legal existence, together with all the corporate rights, and privileges, belonging to a distinct establishment; and the conquest of Canada effected nothing more in this respect, than a suspension of all correspondence and connexion, between the Sulpiciens in Canada, and their brethren in France.

Some further evidence, of less moment, may here be offered.

1st, Notwithstanding the members of the establishment at Montreal, bear the common appellation of *Sulpiciens*, their legal description is exclusively, "*Ecclesiastics of the Seminary of Montreal*,"—a description entirely foreign to the Sulpiciens in France.

2dly, The Officers, or Superiors, of the two several Communities, have ever been distinct from each other.

3dly, The Community of Sulpiciens in France, was founded by *M. Olier*, under Letters Patent, in the year 1645; whereas, the Community at Montreal, was founded by other Letters Patent, in 1677.

The various contracts entered into, at different periods, between the two establishments, as between distinct parties, furnish again some additional proofs; and if it be still insisted, that the Seminary of Montreal had no legal existence, but in as much as it was united to the house of Saint Sulpice in France, the Foundation Charter of the former, or Letters Patent of 1677, which on this supposition would have been nugatory; furnish a conclusive answer to every objection on this head.

Having now, we trust, presented sufficient evidence in support of the proposition, that the Seminary of Montreal has a legal existence as a body corporate, and is consequently entitled to its possessions, as well as to all privileges incident to, and in common with, every other Ecclesiastical Corporation in the British dominions; it must become matter for surprise, that any assertion should have been so far hazarded, as to call the same in question; as well might the title of every ancient family in Canada to the possessions of their forefathers, be brought into doubt; for certainly these families could not produce evidence so full, or proofs so abundant, as those which are here submitted in behalf of the Seminary of Montreal.

Reasons of a higher nature are here purposely abstained from: the chivalrous and religious attachment of the Canadian people to the British Government, has in these times, no ordinary value; and the Government of Great Britain, is the last in Europe, from whom any hostile feeling is looked for towards religious Institutions, on which so much of the good order, happiness, and attachment of its people depend.

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